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SPECIAL COUNSEL

January 29, 2007

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**VIA E-FILING AND HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE: Application of Carolina Water Service, Inc. for approval of a contract with  
Murray Landings Townhomes, LLC

Dear Mr. Terreni:

Enclosed for filing are the original and one (1) copy of the Application of Carolina Water Service, Inc., in the above-referenced matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy of this letter that is enclosed and returning it to me via my courier delivering same.

By copy of this letter, I am serving the Office of Regulatory Staff and enclose a certificate to that effect. If you have any questions or need additional information, please do not hesitate to contact me. With best regards, I am,

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**

s/ Benjamin P. Mustian

Benjamin P. Mustian

BPM/amw  
Enclosure

cc: Florence P. Belser, Esquire  
Nanette S. Edwards, Esquire

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2007-\_\_\_\_-W/S**

IN RE: )  
)  
Application of Carolina Water Service, )  
Inc. for approval of a contract with )  
Murray Landings Townhomes, LLC )  
to serve Murray Landings Townhomes )  
\_\_\_\_\_ )

**APPLICATION**

Carolina Water Service, Inc. (“Applicant” or “Utility”) hereby submits a contract between it and Murray Landings Townhomes, LLC (“Developer”) for consideration by this Honorable Commission under Vol. 26 S.C. Code Ann. Regs. R.R. 103-541 and 103-743 (Supp.2006). In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the Commission in Lexington County, as well as certain other counties in this state. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same. A schedule of the current rates and charges for Applicant’s wastewater service has previously been approved by the Commission in Docket No. 2004-357-W/S.<sup>1</sup> Also, the Commission currently has pending before it in Docket No. 2006-92-W/S the Applicant’s request for adjustment of rates pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2004).<sup>2</sup>

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<sup>1</sup> By way of its Order No. 2005-465 dated October 17, 2005, in Docket No. 2004-357-W/S, the Commission has authorized Applicant to place the current rates and charges into effect under bond pursuant to S.C. Code Ann. Section 58-5-240(D) (Supp. 2004) pending the outcome of its appeal in that matter.

<sup>2</sup> As the Commission is aware, the Commission denied Applicant's request in Docket No. 2006-92-W/S by way of Order No. 2006-543 dated October 2, 2006. Applicant subsequently petitioned the Commission for reconsideration or rehearing of that Order. On November 27, 2006, the Commission issued a directive denying that petition and

2. The Applicant seeks approval of an agreement entered into between Applicant and the Developer dated December 28, 2006 (“Agreement”), a copy of which is attached hereto and incorporated herein by reference as Exhibit “A.” Under Article IV, § 1 of the Agreement, Applicant will provide service to the proposed development pursuant to all of the terms, conditions, rates and charges set forth in its existing rate schedule as are on file with this Commission and in effect from time to time<sup>3</sup>.

3. Pursuant to this agreement, Applicant proposes to serve the Murray Landings Townhomes (“Development”) which will consist of approximately one hundred sixteen (116) townhomes and eleven (11) single family homes when completed. The Agreement provides, *inter alia*, that Developer will construct all of the necessary sewer facilities (“Facilities”) required to connect the proposed development to Utility’s facilities serving its designated Friarsgate Franchised Service Territory, acquire all necessary easements and rights-of-way (“Easements”) and convey such Facilities and Easements to Applicant. Performance of the Agreement is conditioned upon its approval by this Commission.

4. The proposed development is within Applicant’s Commission authorized Service Area in Lexington County and the area franchised to Applicant. Accordingly, no other public or governmental utility is authorized to serve the proposed development.

5. Pursuant Article II, §14 of the Agreement, Applicant has agreed to reserve adequate utility capacity for up to one hundred twenty-seven (127) wastewater connections located within the Development, for a period of three (3) years from such time as the Facilities have been formally accepted by the Utility. After that time, the Utility shall not be obligated to

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approving Applicant’s request to place rates into effect under bond, but no order by the Commission to that effect has yet been issued.

<sup>3</sup> Thus, upon implementation of the rates placed in effect under bond as requested by Applicant in its petition for rehearing in Docket No. 2006-92-WS, and upon any subsequent revisions to rates which may result from any appeal which may be taken from further Commission orders in that docket, the rates to be charged in the proposed development would change.

reserve capacity for which no capacity fees have been received. Applicant submits that this provision is warranted and in the public interest as it ensures that the Developer cannot warehouse capacity such that other development may be discouraged by a potential lack of available capacity. Further, the terms of this contract allow the utility to adequately engage in planning for future operations.

6. Applicant submits that the public convenience and necessity will be served by the approval of this Agreement. Applicant further submits that no hearing in this matter is required. See S.C. Code Ann. § 58-5-240(G) (Supp.2006).

7. All correspondence and communications regarding this matter should be sent to the undersigned.

WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement, be approved; that a hearing on the within matter be waived or review of the within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.

s/ Benjamin P. Mustian  
John M.S. Hoefer  
Benjamin P. Mustian  
**Willoughby & Hoefer, PA**  
Post Office Box 8416  
Columbia, South Carolina 29202-8416  
803-252-3300

Attorneys for Applicant

Columbia, South Carolina  
This 29<sup>th</sup> day of January, 2007

AGREEMENT FOR WASTEWATER SERVICE

MURRAY LANDINGS TOWNHOMES

RICHLAND COUNTY, SC

This Agreement is entered into this 28<sup>th</sup> day of December, 2006 by and between Murray Landings Townhomes, LLC, (hereinafter referred to as "Developer"), and Carolina Water Service, Inc., a South Carolina corporation (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS, Developer is the owner of certain real estate parcels containing approximately 12.40 acres (TMS 001800-01-052, 001800-01-015) that are located east of Merchants Drive and south of Artic Court near Irmo, Lexington County, South Carolina, hereinafter referred to as the "Property" (see "Exhibit 1"); and,

WHEREAS, Developer desires to develop the Property into a residential development to be called "Murray Landings Townhomes" which will contain approximately one hundred sixteen (116) town homes and eleven (11) single family homes when completed; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing sewer service to the public in its designated Friarsgate Franchised Service Territory located in Lexington and Richland Counties, per the August 20, 2003 agreement with Richland County (hereinafter referred to as "County"), and Property is located within the service territory. The Utility desires to have constructed and installed, and the Developer desires to construct and install, the wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement;

WHEREAS, Developer desires Utility to provide wastewater utility service within the Property and Utility desires to provide wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owner(s) of the Property; and,

2. Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer will convey to the Utility or otherwise vest in the Utility such right, title and interest in and to such real estate as may be reasonably necessary to permit the Utility to carry out the terms and conditions of this Agreement; and,
4. Developer will convey to Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may reasonably require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel.

## ARTICLE II

### Obligations and Construction of Facilities by Developer

#### 1. Facilities

Developer shall construct and install all necessary wastewater collection facilities (in accordance with applicable governmental and Utility standards and specifications) to serve the Property, including but not limited to mains, service laterals, Elder valves, manholes, Mission Communications, Inc. remote monitoring unit for the existing Murray Landings lift station, new paved access drive to existing lift station with associated recorded easement documents and other facilities as are reasonably required to provide adequate wastewater service (herein referred to as the "Facilities"). Wastewater collection mains will have a minimum diameter of eight (8) inches and wastewater forcemains will have a minimum diameter of six (6) inches, except where otherwise approved by Utility. Developer shall interconnect the wastewater facilities to Utility's existing gravity wastewater line located along Merchant Drive as determined by Utility.

2. All materials used by the Developer for said Facilities shall be new, first-class, and suitable for the uses made thereof. Developer guarantees all construction, materials, workmanship, and the trouble-free operation of the Facilities (or any portion of the Facilities) for one year after the Facilities (or such portion of the Facilities) are placed in service.
3. All Facilities constructed and installed by Developer pursuant to this Article II shall be constructed and installed without cost or expense to County or Utility.
4. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies which may have jurisdiction thereover, and shall have received the

written approval of County and Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.

5. Developer shall save and hold County and Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
6. Developer shall obtain, in cooperation with County and Utility, all requisite permits and zoning and other approvals and all else required to construct the Facilities.
7. All of the Facilities installed by Developer pursuant to this Agreement shall become the property of County as installed, with the exception of the individual service lines for which each residential unit shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by County and Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall convey the Facilities to County free and clear of all liens, and shall furnish County with lien waivers in a form satisfactory to County's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, rentals, or who perform any services in connection with Facilities construction herein. Developer agrees to provide to County and Utility documentary evidence, in form satisfactory to County and Utility, sufficient to establish the original cost of the Facilities. County shall have, at all times, all right, title and interest in and to the Facilities.
8. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction thereover, and all applicable connection fees have been paid.
9. All connections must be inspected by the Utility prior to backfilling and covering of any pipes. Written notice to the Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends and official Utility holidays.

10. Should the Developer fail to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
11. Developer shall, prior to the transfer of the Facilities to County and Utility, grant permanent, assignable easements satisfactory to County and Utility, authorizing County to own and Utility to operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
12. Developer shall, upon transfer of the Facilities to County, provide to County and Utility as-built drawings (by both hard copy and electronic copy), permits, and all other information reasonably required to operate, maintain, and repair the Facilities.
13. Developer shall submit to Utility a Plan Review Fee of three hundred dollars (\$300) for each phase of the development. Developer shall, prior to the final acceptance of each development phase, or portions thereof, submit to Utility a one hundred fifty dollar (\$150) Inspection Fee. Should the Facilities require additional inspection(s) due to improper installation, defective or unapproved materials, the Developer shall pay one hundred fifty dollars (\$150) for each additional inspection required.
14. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for up to (127) sewer connections located within the Property, for a period of three (3) years from the date of this Agreement. After such time, no capacity shall be reserved for which no capacity fees have been received by Utility.

### ARTICLE III

#### Representations and Warranties of Developer

1. Developer will not, and will not permit by restricted land covenant, any owner of real estate within the Property to construct or maintain any private septic system in the Property.
2. Neither Developer nor any entity or individual affiliated with Developer has executed or will execute any agreement with any lot purchaser in the Property, or any other parties or made any representations to any such purchasers or other parties whereunder such purchaser or other parties have acquired any interest in Facilities to be installed under this Agreement.



#### ARTICLE IV

##### Utility Services, Connection Fees, Rates and Charges

1. Prior to the commencement of utility service, lot owners within the Property are responsible for the payment to Utility of sewer tap-on or connection fees at the rate as in effect from time to time prior to the provision of utility service to any lot within the Property. Such fees, usage and all other incidental rates and charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service on file with the South Carolina Public Service Commission (the "Commission") from time to time and then in effect.
2. Upon installation and acceptance of the Facilities by the County and the Utility and payment of all applicable connection fees, Utility agrees to supply all customers within the Property with adequate and customary wastewater service and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.

#### ARTICLE V

##### Commission Approval

1. Within thirty (30) days following the execution of this Agreement, Utility will file a petition with the Commission requesting approval of this Agreement, if necessary. All terms and conditions contained herein are subject to Utility receiving said approvals from the Commission.

#### ARTICLE VI

##### General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.

2. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
3. The representations, warranties and agreements contained herein shall survive, and continue in effect. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentations or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
4. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
5. Notices, correspondence and invoicing required hereunder shall be given to Developer, County and Utility at the following addresses, or at any other addresses designated in writing by either of the parties subsequent to the date hereof:

If to Utility:

Carolina Water Service, Inc.  
2335 Sanders Road  
Northbrook, Illinois 60062  
Attn: Ms. Lisa Crossett  
Chief Operating Officer

If to County:

Richland County Utilities  
3506 Fernandina Rd.  
Columbia, SC 29210  
Attn: Mr. Reynaldo Angoluan

If to Developer:

Murray Landings Townhomes, LLC  
557 Whiteford Way  
Lexington, SC 29072  
Attn: Mr. Wade McGuinn

Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

6. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be

binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. This Agreement shall be governed by the laws of the State of South Carolina.
8. If this Agreement is not executed prior to **December 29, 2006**, then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

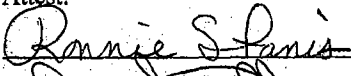
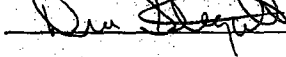
IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

Carolina Water Service, Inc.

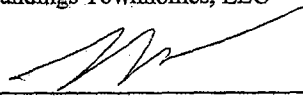
By: 

Its: Vice President

Attest:

Murray Landings Townhomes, LLC

By: 

Its: Manager

Attest:

